SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1969

No. 898

FRANCIS D. WHITE and GERTRUDE W. WHITE,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

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The petitioners herein respectfully move this Court for an order (1) vacating its denial of the petition for a writ of certiorari, entered on February 24, 1970, and (2) granting the petition. As grounds for this motion, petitioners state the following:

The petition herein was based, in large part, on an alleged conflict between the decision of the Second Circuit in the instant case and that of the Seventh Circuit in *United States v. Dickerson*, 413 F. 2d 1111 (decided July 28, 1969). The Government, while conceding the conflict, asserted that it was not a viable one in view of the fact that the *Dickerson* rule was made applicable by the Seventh

Circuit only to interrogations taking place subsequent to the date of that decision and in view of the present policy of the Internal Revenue Service to give "virtually full" *Miranda* warnings to taxpayers interviewed by a Special Agent (Mem. 3, 4).

We believe that there is no merit in the Government's suggestion that *Miranda* requirements, if applicable, may be satisfied by delivery of less than the full scale warnings set forth in *Miranda* itself.[1] We feel, however, that this Court may have found persuasive the Government's contention that, despite the conflict in rationale between the instant case and *Dickerson*, there would have been no conflict in disposition of the matter—for the reason that the interrogations in the instant case took place prior to the date on which *Dickerson* was decided and, accordingly, the Seventh Circuit would have reached the same result as the Second Circuit. In this view of the matter, a clear cut conflict between the Circuits based on *Dickerson* will not arise unless and until a case is presented in which a Court of Appeals holds that the *Miranda* warnings were not required in an interrogation conducted *after* July 28, 1969, the date of decision in *Dickerson*.[2]

Even assuming, however, an identity of disposition of the instant case by the two Courts of Appeals, we respectfully submit that it is in the best interests of judicial administration that the conceded conflict in rationale and basic approach be resolved now. As long as this conflict between Circuits remains unresolved, it is fair to anticipate

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[1] *Cf. Pennsylvania v. Yount*, No. 952 pending this Term, petition for certiorari filed on December 13, 1969.

[2] Such a case seems virtually certain to arise in view of the fact that eight Circuit Courts have held that the *Miranda* warnings are not required in tax investigations not involving custody.

that the litigation over this issue, prolific to this point, will continue but little abated. In the face of an open split between Circuits as to the correct disposition of the issue, we submit that it is highly probable that counsel for taxpayers will feel impelled to protect their clients' rights by continuing to raise the issue until such time as it is finally resolved. The denial of certiorari in cases involving pre-July 28, 1969 interrogations seems unlikely to stem this tide, for no taxpayer can be assured that if this Court ultimately decides the issue and does so favorably to the taxpayer, it will adopt the cut off date established in *Dickerson*. Accordingly, the instinct to preserve all rights, both as to pre-July 28 and post-July 28, 1969 interrogations, would seem likely to be strong. This prospect seems likely to be enhanced, moreover, by continuing uncertainty as to the precise ground for denial of certiorari in post-*Dickerson* cases.

If this analysis is correct, as we believe it to be, the lower federal courts, already heavily burdened, will continue to be faced with the necessity of conducting many evidentiary hearings on suppression motions and of hearing and deciding appeals in such cases. We respectfully submit that such protracted litigation could be avoided by resolving the issue now; that the conceded conflict between Circuits as to rationale and basic approach provides an appropriate basis for so doing; and that such resolution would serve the best interests of judicial administration.

This motion is made on the further ground that *Caiello v. United States*, No. 1243 pending this Term, filed after the denial of certiorari in the instant case, raises the same issue as that presented herein. In the event that certiorari is granted in *Caiello*, we respectfully submit that the denial of certiorari in the instant case should be vacated and certiorari granted.

Conclusion

For the reasons set forth above, as well as those contained in the petition for a writ of certiorari, petitioners pray that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

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ALBERT R. MUGEL,
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of Counsel.

March 1970.

Certificate of Counsel

As counsel for the petitioners, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58 (2).

CHARLES K. RICE,
Counsel for Petitioners.